



OCV Advocate

OFFICE OF CRIME VICTIMS ADVOCACY
QUARTERLY NEWSLETTER

Serving as a voice within state government for crime victims and their families

Officer Involved Domestic Violence

New Legislation Passes To Help Victims of DV By Law Enforcement

SSB 6161, a bill recently signed into law in Washington State, is the nation's first law to require statewide policy regarding domestic violence by officers. The bill was sponsored by Senator Debbie Regala.

According to a recent study, as many as 40% of police officer families may experience domestic violence¹; yet, a 1994 nationwide survey of 123 police departments documented that almost half (45%) had no specific policy for dealing with officer-involved domestic violence. In that same study, the most common discipline imposed for a sustained allegation of domestic violence was counseling, and only 19% of the police departments in the study indicated that officers would be terminated after a *second* sustained allegation of domestic violence.² According to the Seattle Post Intelligencer, 41 police officers in King and Pierce counties alone have been accused of domestic violence related charges in the past five years.³

SSB 6161 was the product of a committee cochaired by Tacoma attorney Debra Hannula and State Supreme Court Justice Barbara Madsen that began meeting after the murder of Crystal Brame by her husband, Tacoma Police Chief David Brame. The committee, the Task Force on Officer Involved Domestic Violence, was comprised of over 70 domestic violence educators, counselors, victim advocates,

attorneys, and members of the law enforcement community.

SSB 6161 was the result of months of effort on the part of the Task Force. The bill directs the Washington State Association of Sheriffs and Police Chiefs to develop state model guidelines by December 1st that local agencies may use. (See article on page 5)

By June 1, 2005, all law enforcement agencies in the state must either adopt the model policies or implement their own policies that meet the minimums set forth in the legislation. If the agency chooses to write their own policy, they will be required to consult with public and private domestic violence advocates and other appropriate organizations. By June 2006, all law enforcement officers must have received training on his or her agency's DV policy, and employees hired in the future must receive the same training within their first six months of employment.

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Attorney General's Work on Officer-Involved Domestic Violence

In response to the public attention brought to domestic violence committed by law enforcement after the murder of Crystal Brame, the Washington State Attorney General's Office formed a workgroup to provide resources and information to law enforcement agencies and the public.

This workgroup, which was made up of representatives from the Office of the Attorney General, Washington State Coalition Against Domestic Violence, Washington Association of Sheriffs and Police Chiefs (WASPC), Washington Council of Police and Sheriffs, Washington Association of Prosecuting Attorneys, and OCVA, presented a symposium on Officer Involved Domestic Violence on October 27, 2003.

The symposium was attended by over 400 law enforcement representatives, domestic violence advocates and concerned members of the community, and addressed many of the issues involved in domestic violence perpetrated by law enforcement.

The workgroup developed and distributed the Handbook on Law Enforcement Domestic Violence to symposium attendees; the Handbook, which

explores some of the complexities of officer-involved domestic violence, is available in electronic format on the web at: www.atg.wa.gov/pubs/Law_Enforcement_HB.pdf.

The project will also bring together approximately 50 representatives from Kitsap County, Yakima County, and Walla Walla County criminal justice and domestic violence advocacy organizations to discuss practical tools that can be applied to officer-involved domestic violence, including policies, procedures, and collaborative strategies.

For more information about Officer-Involved Domestic Violence, see article on page 5, WASPC Model Policies.

Other Domestic Violence Bills Passed This Legislative Session:

HB 2473 prohibits law enforcement officers from bringing weapons into court if he or she is party to a domestic violence or harassment case.

HB 1645 allows victims of domestic violence, sexual assault, or stalking to break rental agreements without paying extra rent, and prohibits landlords from evicting or refusing to rent to them.

SB 6384 authorizes an extra \$100 penalty on those convicted of domestic violence, which will go to help finance prevention programs.

Victims of Juveniles Gain Rights with ESSB 6472

“All victims, regardless of the age of their offenders, should be afforded basic rights and services by the courts, including notification of key events in their case, information about the offender’s status, court-ordered restitution and protection, and referrals to victim assistance services and compensation. Additionally, it is critically important for all victims to be treated with dignity and respect.” Kathryn M. Turman, Director, Office of Victims of Crime.

ESSB 6472, a bill which secures the rights of victims of crime in juvenile cases, was passed this legislative session. The bill, which defines ‘victim’ in the Juvenile Justice Act, provides crime victims in juvenile cases the same rights as crime victims in adult cases, including:

- the victim’s right to participate in proceedings;
- the victim’s right to have a support person present;
- the victim’s right to be notified of court proceedings;
- the victim’s right to be informed regarding the diversion process;
- the victim’s right to receive victim impact

statement and restitution claim forms.

In addition, wording that limited restitution for counseling costs only to victims of sex offenses was removed.

The Washington State Supreme Court’s 2003 decision to overturn an order for \$560.74 in restitution for counseling costs to a victim of fourth degree assault with sexual motivation was one catalyst for revising the Juvenile Justice Act. The Supreme Court made clear their reluctance to deny the victim restitution, but indicated that their hands were tied unless the law was changed.

“Although we may wish that the legislature had not said what it did say, we cannot simply wish away the legislature’s specific statement that restitution ‘shall be limited to ... the costs of the victim’s counseling ...if the offense is a sex offense.’ RCW 13.40.020. If the restitution for counseling is to be available to victims of juvenile crimes that are not sex offenses, the legislature, not the courts, must delete this statutory language that says otherwise.”¹



ESSB 6472 was the subject of debate from opponents, who argued that juvenile offenders would not be able to pay restitution to their victims the same way that adult offenders can. The bill, however, includes clauses that allow judges discretion in cases where the juvenile can show an inability to pay the necessary restitution during the ten years following sentencing.

Restitution for juvenile offenders is a key element to victims realizing justice. ESSB 6472 is part of a nationwide movement to uphold victims’ rights in juvenile justice cases, and to focus on the needs of the victim as well as the rights of the juvenile offender.

Over the past two decades, juvenile cases have moved toward holding the offender more accountable for their crimes; more juveniles are being tried as adults, and

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Crawford Decision Impacts Domestic Violence Cases

A March 8, 2004 United States Supreme Court ruling increases the difficulty in prosecuting many domestic violence cases in which the victim does not choose to testify.

The ruling, *Crawford v. Washington*, centers around the Confrontation Clause of the 6th Amendment, in which a defendant is given the constitutional right to face witnesses for the prosecution at trial. The court sided with Michael Crawford of Olympia who had been convicted of stabbing a man he thought had tried to rape his wife.

Crawford claimed the stabbing was in self-defense, but had been convicted based on his wife's earlier taped statement to police that the victim of the stabbing was unarmed. Crawford's wife did not testify at his trial. The core of Crawford's appeal to the US Supreme Court was that because the defense was unable to cross-examine his wife's testimony, his conviction was based on a violation of his 6th Amendment rights.

The Supreme Court agreed unanimously to overturn Crawford's conviction, and in a 7-2 decision ruled to abandon the 1980 ruling, *Ohio v. Roberts*, that had allowed hearsay testimony to be admitted as evidence if the witness didn't choose to testify

and if a judge found the testimony trustworthy.

"Dispensing with confrontation because testimony is obviously unreliable is akin to dispensing with jury trial because a defendant is obviously guilty," Justice Antonin Scalia, who wrote the decision. "This is not what the Sixth Amendment prescribes."

Chief Justice William Rehnquist and Justice Sandra Day O'Connor dissented from the decision to throw out the *Ohio v. Roberts* ruling, stating that the decision complicated, rather than clarified, the rules prosecutors should follow.

"The thousands of federal prosecutors and the tens of thousands of state prosecutors need answers," Rehnquist wrote. "They need them now, not months or years from now...The parties should not be left in the dark in this manner."

Previously, prosecutors handling domestic violence and child abuse statements did not have an obligation to have the victim of the crime testify at trial. Statements made to law enforcement could be used as evidence if they were found to be reliable. Typically, these statements were made within the first 24 hours after an arrest.

Now, in many cases, prosecutors will have to face decisions between dismissing cases where a victim is unwilling to testify, or compelling victims to testify by issuing arrest warrants. Witness statements will now only be used in court for those witnesses who are genuinely unable, as opposed to unwilling, to testify, and whom the defense has had a prior opportunity to cross-examine.

The Crawford decision affects only witness statements that are testimonial in nature; the decision should not have an impact on excited utterances (e.g. "He's got a gun!"), statements made while observing something immediately happening (e.g. "Someone's at my door."), statements made to medical providers for the purpose of treatment, or tapes of 911 calls.

It was unclear whether the Supreme Court's ruling will be retroactive. What is clear is that the Crawford decision puts significant pressure on victims of crime such as domestic violence to testify against their abusers. Victim advocates have fought for years to focus prosecution of domestic violence on evidence-based prosecution rather than on victim testimony; now, much of that evidence regarding victim's statements to police will not be admissible in court.

Officer-Involved Domestic Violence

(Continued from Page 1)

“What happened to Crystal Brame remains a dark moment for Washington’s law enforcement community,” said Senator Debbie Regala in a February press release, “but this bill offers some hope by ensuring what happened to her doesn’t happen to anyone else.”⁴

(Footnotes)

¹ Neidig, P.H., Russell, H.E. & Seng, A.F. (1992).

“Interspousal aggression in law enforcement families: A preliminary investigation.” *Police Studies*, Vol. 15 (1), p. 30-38.

² Arlington, Texas Police Department and Southwestern Law Enforcement Institute (1995). *Domestic assaults among police: A survey of internal affairs policies*.

Southwestern Law Enforcement Institute.

³ Teichroeb, Ruth. “Lawmakers want to require domestic violence policies.” *Seattle Post-Intelligencer*. 22 Oct. 2003.

⁴ Department of Information Services. 22 Mar. 2004. <http://access.wa.gov/leg/2004/Feb/n200413_6787.aspx>.

WASPC Model Domestic Violence Policies

The model policies regarding officer-involved domestic violence being drafted by law enforcement and domestic violence advocacy representatives will include the following elements mandated by SSB 6161 (*see “Officer Involved Domestic Violence” on Page 1*):

√ Mandatory reporting by law enforcement employees who have knowledge of allegations of domestic violence;

√ Pre-hire screening of law enforcement applicants to determine if they have a history of domestic violence, child abuse/ neglect, restraining orders, anti-harassment orders, no-contact orders or protection orders in any state;

√ Mandatory and immediate responses to domestic violence allegations brought against officers;

√ Policies for when employees report they are a victim of domestic violence by another employee;

√ Mandatory self-reporting of employees being investigated for domestic violence, child abuse or neglect, or have been subject to restraining, anti-harassment, no-contact or protection orders;

√ Policies for action to be taken during investigations, such as relieving employees of agency-issued weapons or suspending the employee’s power of arrest;

√ Discipline or sanctions for sustained allegations of domestic violence;

√ Making information about DV policies, confidentiality, and DV resources immediately available to victims of officer-involved domestic violence;

√ Timely response to victim’s inquiries about the status of an investigation;

√ Procedures requiring law enforcement agencies to provide notification if allegations are brought

against an officer from another jurisdiction;

√ Procedures allowing agencies to access and share domestic violence training both within and across jurisdictions;

√ Referring employees to treatment programs at their request, as well as employees against whom domestic violence allegations have been brought. The committee, which is chaired by Sumner Chief of Police Colleen Wilson and includes representatives from OCVA, WSCADV, and law enforcement, will compare different domestic violence policies from a variety of law enforcement agencies as part of the drafting process.

The model policies are expected to be finished and approved by WASPC membership this fall. After the model policies are completed and approved, they will be distributed to law enforcement agencies around the state.

Victims of Juveniles

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stronger sentencing guidelines for juveniles has made juvenile sentencing and procedures more similar to those of adult offenders. However, while the focus of most juvenile courts has moved away from the “best interests of the child” offender, few have moved toward “the best interests of the victim.”²

Crimes committed by juveniles affect thousands of individuals each year. In 1995, juveniles committed 147,700 violent crimes, as measured by the juvenile violent crime index, which includes murder, nonnegligent manslaughter, rape, robbery, and aggravated assault. According to the Bureau of Justice Statistics’ National Crime Victimization Survey in 1997, 27% of all serious violent victimizations involved juvenile offenders.³

Increasing juvenile accountability to victims in the justice process may also have a significant benefit to the offenders themselves. In a study conducted by the National Center for Juvenile Justice of 6,336 juvenile probation cases in Utah, sentencing juvenile

offenders to pay restitution to their victims was found to cause a significant reduction

According to the Bureau of Justice Statistics’ National Crime Victimization Survey in 1997, 27% of all serious violent victimizations involved juvenile offenders.

in recidivism. In addition, giving juvenile offenders the power to make some compensation to their victims may give them an opportunity to see crime victims as people and their own actions as having direct consequences. In a California case, one juvenile offender voluntarily took out a loan to pay a significant portion of the \$9,000 in restitution she owed her victim, opting to pay off the loan in \$30 payments each month. The offender said she did not want to make the victim suffer more by having to wait for the money.⁴

In addition to adding restitution and other victims rights to the current Juvenile Justice Act, ESSB 6472 clarifies language to prohibit juvenile sex offenders from attending the same elementary, middle, or high school as their victim or the victim’s siblings. The bill

also extends the definition of victim of all juvenile offenses to include parents and guardians of minor children or of incapacitated, disabled, or incompetent adults.

ESSB 6472 is a leap forward in bringing juvenile justice closer to achieving full crime victims rights in Washington State.

“We started this effort with specific major goals in mind,” said OCVA Managing Director Bev Emery. “We got those in the final bill. I’m disappointed we didn’t get every change we wanted--but ensuing victims rights apply in cases of juvenile offenders is a huge victory.”

(Footnotes)

¹ State of Washington v. J.P. b.d. 12-05-85.

² “Victims, Judges, and Juvenile Court Reform Through Restorative Justice,” OVC Bulletin, October, 2000; www.ojp.usdoj.gov/ovc/publications/bulletines/vjj_10_2000_2.

³ Juvenile Offenders and Victims: 1999 National Report.

⁴ “CYA Victim Restitution Collection Up 300%,” California Youth Authority, November 24, 1998. www.cya.ca.gov/library/news/restitution.html.

Thank You
to
Joan Renner
for
25 years of service to
sexual assault victims at
the YWCA of Clark County!

*Congratulations to **Robyn Light**
who is retiring from the Yakima County
Prosecutor's Office in June, after 25
years to service to victims of crime.*

State agencies are developing strategic plans and proposed 2005-2007 budgets. These materials are due to the Governor's Office by August 1.

OCVA will release a second Trafficking in Persons Report to the legislature in June 2004.

STOP grant funds to Washington State are down approximately \$300,000 from the current level of funding.



Did you know:

*The Washington State Domestic Violence Hotline responded to **27,378** crisis calls during the 2003 fiscal year.*

In that same year, Washington Sexual Assault programs:

- *Answered **18,139** information and referral calls,*
- *Responded to **16,354** crisis intervention calls,*
- *Helped **9,995** new clients through their services.*

INFORMATION

The Office of Crime Victims Advocacy serves as a voice within state government for the needs of crime victims in Washington State.

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